

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ANDREW JOHN GIBSON,	§	
Petitioner,	§	
	§	
V.	§	Civil Action No. 4:19-CV-381-O
	§	
ERIC WILSON, Warden, ¹	§	
FMC-Fort Worth,	§	
Respondent.	§	

OPINION AND ORDER

Before the Court is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 filed by Petitioner, Andrew John Gibson, a federal prisoner who was confined in the Federal Medical Center in Fort Worth, Texas (FMC-Fort Worth), at the time the petition was filed, against Eric Wilson, warden of FMC-Fort Worth, Respondent. After considering the petition and relief sought by Petitioner, the Court has concluded that the petition should be dismissed for lack of subject matter jurisdiction.

I. BACKGROUND

According to the Bureau of Prisons's website, Petitioner is now confined at FCI-Big Spring in Big Spring, Texas. He is serving a 168-month term of imprisonment pursuant to his 2017 federal conviction in the District of Nevada for receipt of child pornography. J., United States v. Gibson, Criminal Action No. 2:14-cr-00287-KJD-CWH-1, ECF No. 251.

II. ISSUES

By way of this habeas petition, Petitioner complains that, in violation of his rights under the Eighth Amendment, his psychiatrist at FMC-Fort Worth has shown deliberate indifference to his

¹Petitioner designates "Warden Willson" as Respondent, however the warden of FMC-Fort Worth is Eric Wilson. The clerk of Court is therefore directed to designate "Eric Wilson, Warden, FMC-Fort Worth" as the party respondent.

serious medical needs by denying him the “proper and known working treatment of Wellbutrin [sic] for depression when this has been the used treatment for the last 7 years” and refusing to listen to him. Pet. 7-8, ECF No. 1. According to Petitioner, Wellbutrin prevents suicidal ideation. *Id.* at 8. He requests the Court order Wellbutrin “as shown in [his] medical record prior to Fort Worth and \$500,000 in mental anguish.” *Id.* at 9.

III. DISCUSSION

Title 28, United State Code, section 2243 authorizes a district court to summarily dismiss a frivolous habeas-corpus petition prior to any answer or other pleading by the government.² Therefore, no service has issued upon Respondent.

Courts have long recognized that habeas-corpus actions are the proper vehicle to challenge a prisoner’s fact or duration of confinement. *See, e.g., Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Conversely, attacks by a federal prisoner regarding conditions or mistreatment during confinement are properly brought in civil-rights actions under *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)); *Cook v. Texas Dep’t of Criminal Justice Transitional Planning Dep’t*, 37 F.3d 166, 168 (5th Cir. 1994); *Schipke v. Van Buren*, 239 Fed. App’x 85, 85-86, 2007 WL 2491065, at *1 (5th Cir. 2007). Taken at face value, Petitioner’s petition relating to his mental-health treatment at FMC-Fort Worth is not cognizable on habeas review. 42 U.S.C. § 1983; *Carson v. Johnson*, 112 F.3d 818, 820-21 (5th Cir. 1997).

²Section 2243, governing applications for writ of habeas corpus, provides:

A Court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, *unless it appears from the application that the applicant or person is not entitled thereto.*

28 U.S.C. § 2243 (emphasis added).

III. CONCLUSION

For the reasons discussed herein, Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is DISMISSED for lack of subject matter jurisdiction. A certificate of appealability is DENIED. The clerk of Court shall mail a copy of this Order and the Court's Final Judgment to Petitioner at his address of record and at FCI-Big Spring, Federal Correctional Institution, 1900 Simler Avenue, Big Spring, TX 79720.

SO ORDERED on this 8th day of May, 2019.


Reed O'Connor
UNITED STATES DISTRICT JUDGE